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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,794	01/19/2001	Ariel Shapiro	U013219-0	1361

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EXAMINER

MADSEN, ROBERT A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 09/03/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application N .

09/765,794

Applicant(s)

SHAPIRO, ARIEL

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 17,19,21-29 and 50-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17,19,21-29, and 50-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### DETAILED ACTION

1. The Amendment filed June 16, 2003 has been entered. Claims 1-16, 18, 20, 30-49 were cancelled and claims 50-56 were added. Claims 17, 19, 21-29, and 50-56 remain pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 17 and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Montalbano (US 5180075).

4. Montalbano teaches a carton with a localized atmosphere communication aperture formed in a wall that is sealable (e.g. handle openings 20)) by sealing elements (i.e. panels 24a/b), as recited in claim 50, a plurality of ventilation apertures (items 32) on the carton wall, and a water vapor permeable bag (item 8) disposed within the carton as recited in claim 17 (Column 5, lines 3-26, lines 44-46, 59-64).

5. Claims 17, 26, and 50 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodriguez et al. (US 5617711).

6. Rodriguez teaches carton for produce, as recited in claim 26, with a localized atmosphere communication aperture (i.e. items 22 and 13) formed in a wall, which are

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sealable by flaps as recited in claim 50 (Column 3, lines 31-50, Column 4, lines 40-49), a plurality of ventilation apertures (items 20 ) on the carton wall, and a water vapor permeable bag (item 8) disposed within the carton as recited in claim 17 (Column 7, line 39 to Column 8, line 19).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 17, 19, 21, 26, 27, 50-54, 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al. (US 5609293) in view of Badran (US 3450542) and Raudalus et al. (US 555658).

9. Regarding claims 17, 19, 21, 26, 27, 50-54, 56, Wu et al. '293 teach a modified atmosphere lined carton for agricultural produce, as recited in claims 26 and 27, and teach various structures/features to arrive at desired storage characteristics. Wu et al. '293 teach providing ventilation holes (e.g. items 36 and 38) to enable the transfer of ambient air and establish equilibrium during stacking (Column 2, lines 18-36, Column 8, lines 13-36). Wu et al. '293 further teach the lining may be in the form of either a coating or a separate inner liner (i.e. a bag), wherein the separate inner liner is preferred for the convenience of filling the carton with fruits or vegetables, and Wu et al. '293 teach such an inner lining may have any desirable vapor permeability (Column 10,

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lines 8-30, Column 7, lines 23-33). Additionally Wu et al. '293 teach a sealable aperture (i.e. a valve sealed with a plug element, as recited in claims 19,50-54,56) in the outer wall of the carton may be included so that one may establish the modified atmosphere in the inner portion of the sealed container, as recited in claim 21 (Column 30, lines 30-39, Column 6, lines 23-34). However, Wu et al. '293 do not expressly teach the bag, multiple vents, and sealable aperture in one single combination.

10. Badran is relied on as evidence of the combination of a carton containing a bag with a desired permeability, multiple vents, and a sealable aperture that is used to affect the modified atmosphere of the bag interior (e.g. item 30 of the carton provides access to item 20 of the bag) for preserving fresh produce ( Figures, Column 4, lines 10-43, Example 1 in Column 4, line47 to Column 5, line 60).

11. Raudalus et al. are relied on as further evidence of the combination of a carton containing a permeable bag with a desired permeability (e.g. via items 6 in Figure 1), multiple vents (e.g. items 20), and a sealable aperture that is used to affect the modified atmosphere of the bag interior even when stacked (e.g. item 22 of the carton provides access to the opening means of the bag item 8) for preserving fresh produce ( Figures 1 and 3, Column 8, line 55 to Column 10, line 60)

12. Therefore it would have been obvious to combine the features taught by Wu et al. '293 and include a carton comprising a permeable bag, multiple vents, and sealable aperture since Wu et al. teach benefits of each: (1) a separate permeable inner liner (i.e. a bag) provides an easier means of filling fruits or vegetables into the carton, (2) the multiple vents provide air flow into stacked cartons and help to establish an equilibrium

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with the surrounding atmosphere, and (3) sealable aperture comprising a valve and plug combination allows one to fill a closed inner liner with a desired modified atmosphere, and Badran and Raudalus et al. both teach the fresh produce packages featuring a carton with the combination of (1) a separate permeable bag, (2) multiple vents, (3) a sealable aperture used to alter the gas content inside the bag. One would have been substituting one known fresh produce package feature for another for the same purpose.

13. Claims 22-25, 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al. (US 5609293) in view of Badran (US 3450542) and Raudalus et al. (US 555658), as applied to claims 17,19,21,26,27,50-54,56 above, further in view of Wu et al. (US 575418)

14. Although Wu et al. '293 teach a sealing layer comprising a gas impervious seal, as recited in claim 25, to seal *both* the carton aperture and bag aperture, as recited in claim 24, Wu et al. '293 (herein referred to as '293) are silent in teaching an adhesive coated plastic sticker as recited in claims 22-25, 28-29.

15. Wu et al. '418 (herein referred to as '418) also teach modified atmosphere lined fresh produce cartons with an aperture sealed by a plug element and ventilation ports (Abstract, Figures 3a-3b). However, '418 also teaches one may alternatively use an adhesive gas barrier tape, which are coated plastic stickers,(e.g. item 20 of Figure 3c) as a suitable sealing layer in place of a plug element(Column 7, lines 9-31). Therefore, it would have been obvious to replace the plug element of '293 with an adhesive

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coated plastic sticker since '418 teaches either the plug element or adhesive sticker is suitable for an aperture in a modified atmosphere lined fresh produce carton and one would have been substituting one sealing element for another for the same purpose.

16. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wu et al. (US 5609293) in view of Badran (US 3450542) and Raudalus et al. (US 555658) as applied to claims 17,19,21,26,27,50-54,56 above, further in view of Scholle (US 3087655).

17. Wu et al. '293 a first and second locking element wherein the first locking element is a valve for removing or inserting gases into the inner bag and the second element is used to seal the valve, but are silent in teach that the first is screwed onto the second. Scholle also teaches an inner bag having a first locking element for filling or emptying the inner bag and a second locking element to seal the first locking element. Scholle teaches the two elements lock by using a plug means (i.e. pressure fitting) or using a screwing means as recited in claim 55 (Column 2, lines 34-35). Therefore, it would have been obvious to modify Wu et al. '293 and include a first and second element that are screwed together since Scholle teaches these are equivalent locking elements for providing a sealable means for filling and emptying a bag that is held within a carton, and one would have been substituting one type of locking element for another for a bag in carton package.

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**Conclusion**

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP 706.07(a). Applicant is reminded of the extension of time policy set forth in 37 CFR 1.136(a).


19. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

22. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761  
August 21, 2003

  
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